

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHAN MURRAY,	§
	§ No. 307, 2009
Defendant Below,	§
Appellant,	§ Court Below – Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ Cr. I.D. No. 0804021506
STATE OF DELAWARE,	§
	§
Plaintiff Below,	§
Appellee.	§

Submitted: February 17, 2010

Decided: February 23, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices

O R D E R

This 23rd day of February, 2010, it appears to the Court that:

1) The defendant-appellant, Stephan Murray (“Murray”), appeals from final judgments of conviction in the Superior Court for Trafficking in Cocaine, Possession of a Firearm during the Commission of a Felony (“PFDCF”), Possession with Intent to Deliver a Narcotic Schedule II Controlled Substance, Possession of a Deadly Weapon by a Person Prohibited, Maintaining a Dwelling for Keeping Controlled Substances, Possession of Drug Paraphernalia, and Endangering the Welfare of a Child.

2) In this appeal, Murray argues that the trial judge erred in denying his motion to suppress evidence because the administrative search

of his home by Probation and Parole officers was not supported by reasonable suspicion. We have concluded that contention is without merit.

3) On April 16, 2008, Officer Justin Breslin (“Breslin”) of the New Castle County Police Department stopped a car that had illegal tinted windows. Murray was driving the car, and Jerome Rice (“Rice”), the owner of the car, was in the passenger seat. After learning that Murray’s driving license had been suspended, Breslin asked Murray to step out of the car and performed a pat-down search of him. With Murray’s consent, Breslin retrieved a bundle of \$1,430 in cash from Murray’s pocket.

4) Breslin’s supervisor, Detective Brian Shahan (“Shahan”) and Probation Officer Robert Willoughby (“Willoughby”) soon arrived at the scene. Willoughby, who had previously arrested Murray for possession of narcotics, was called to the scene because Murray was on Level III probation as a result of earlier convictions of first degree Reckless Endangering and PFDCF. In response to Willoughby’s questions about the money, Murray told Willoughby that he had earned that money “under the table” by working as a barber, and that he intended to use it to buy rims for Rice’s car. Rice, however, told Willoughby that he was going to trade the rims on the car for new ones. Willoughby, who had been informed by another probation officer that Wright was unemployed, asked for and obtained permission from his

(Willoughby's) supervisor to conduct an administrative search of Murray's residence.

5) Later that day, Willoughby, Shahan and other officers searched Murray's bedroom in his girlfriend's father's house, where they recovered a digital scale, two loaded handguns, 36.98 grams of crack cocaine, \$1,150, and Murray's Department of Correction identification card. Murray was taken into custody and signed a *Miranda* waiver form. During an interview with Shahan, Murray confessed that he was selling crack cocaine and that he owned the items found in his room.

6) Murray was indicted on Trafficking in Cocaine, two counts of PFDCF, Possession with Intent to Deliver a Narcotic Schedule II Controlled Substance, two counts of Possession of a Deadly Weapon by a Person Prohibited, Maintaining a Dwelling for Keeping controlled Substances, Possession of Drug Paraphernalia, and Endangering the Welfare of a Child. Murray was also found to be in violation of his probation, which was revoked, and he was re-sentenced.

7) Trial was scheduled to begin January 21, 2009. On that date, Murray orally moved to suppress the evidence obtained by the search. The parties stipulated to the facts leading to the search. Based upon those

stipulated facts, the motion to suppress was denied.¹ Murray was convicted on all charges.² This appeal followed.

8) Murray's sole claim on appeal is that the trial judge erred in denying his motion to suppress the evidence found as a result of the administrative search of his room. Murray contends that the search was "unreasonable" because Willoughby lacked "reasonable suspicion" that he was engaged in illegal activity. To the extent that claim of error implicates questions of law, our standard of review is *de novo*.³

9) Probationers do not have the same liberties and constitutional protections from searches and seizures as ordinary citizens.⁴ A search of a probationer's home, however, must be based on the probation officer's "reasonable suspicion."⁵ "Reasonable suspicion exists where the totality of the circumstances indicates that the officer had a particularized and objective basis for suspecting legal wrongdoing."⁶

¹ Because the motion was untimely, the Superior Court did not hold an evidentiary hearing. Rather, the trial judge heard stipulated findings of fact regarding Murray's arrest and found that, based on those facts, a timely motion would have also been denied.

² Murray agreed to a bench trial on the two Possession of a Deadly Weapon by a Person Prohibited charges.

³ *Sierra v. State*, 958 A.2d 825, 828 (Del. 2008); *Donald v. State*, 903 A.2d 315, 318 (Del. 2006).

⁴ *Sierra v. State*, 958 A.2d at 828.

⁵ *Id.*

⁶ *Id.* (internal quotation omitted).

10) Murray concedes that he was properly stopped and searched, but, he argues his motor vehicle violations had no rational relation to any additional illegal activity. Specifically, Murray contends that Willoughby had no reasonable ground to infer that the cash found on Murray was earned by dealing in contraband, because Murray's prior conviction for narcotics, five and one-half years before, was not sufficiently proximate to his motor vehicle arrest, and there was nothing illegal or drug-related located in the vehicle or on the persons of Murray or the passenger, Rice. Therefore, Murray submits that Willoughby could not have had a "reasonable suspicion" that Murray was anything illegal in his room.

11) The record does not support that argument. Murray acknowledges that the following circumstances were established before the search of his room took place: first, an automobile belonging to Jerome Rice was properly stopped by the police for a tinted window violation; second, Murray was operating the vehicle with a suspended driver's license; third, a DELJIS search revealed that both Murray and the passenger, Rice, were active probationers; fourth, Probation and Parole Officer Willoughby was present at the motor vehicle stop and personally questioned Murray; fifth, Murray possessed a large amount of cash; sixth, inconsistent statements were given to Willoughby by Murray and Rice regarding that

cash; and seventh, probation and parole records indicated that Murray was unemployed, although Murray advised Officer Willoughby that he was employed and was being paid “under the table.” The “totality” of those circumstances, especially the conflicting explanations for the significant amount of cash in the possession of an “unemployed” probationer, established “a particularized and objective basis” for suspecting legal wrongdoing. Under those circumstances Willoughby’s suspicion that there might be evidence of illegal activity in Murray’s room was reasonable, even though none of those circumstances related to any contraband in the car.⁷

12) Murray also argues that Willoughby’s suspicion was unreasonable because there was no surveillance or informant information regarding legal activity in which Murray was engaged. Although this Court’s opinions in *Sierra*⁸ and *Culver*⁹ hold that probation officers must assess the reliability of information received from informants before performing a search based on that information, those opinions *do not* require informant or surveillance information in order to form a “reasonable suspicion” when the probationer officer’s personal knowledge is sufficient. In this case, the totality of the circumstances known to Willoughby based

⁷ Cf. *Donald v. State*, 903 A.2d at 319.

⁸ *Sierra v. State*, 958 A.2d at 831.

⁹ *Culver v. State*, 956 A.2d 5, 11 (Del. 2008).

upon his personal knowledge of the facts established the necessary basis for a search of the probationer Murray's room.

13) The Superior Court correctly denied Murray's motion to suppress.

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgments of the Superior Court are affirmed.

BY THE COURT:

/s/ Randy J. Holland
Justice